

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2-PLR-112525-02

Date:

June 19, 2002

Legend

X =

A =

B =

f =

g =

h =

D1 =

D2 =

Dear :

This responds to your representative's letter dated February 15, 2002, and subsequent correspondence, submitted on behalf of X, requesting a ruling that X's income from a mobile home park is not passive investment income within the meaning of § 1362(d)(3)(C)(i) of the Internal Revenue Code.

The information submitted states that X is a C corporation whose stock is held by A and B. X requests this ruling in anticipation of making an election to be an S

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corporation effective D2.

X is engaged in owning and operating a mobile home park containing f sites. X, directly and through contractors, provides various services in operating the mobile home park. Services with respect to the mobile home park are uniform for each of the leases. X's responsibilities for the mobile home sites include, but are not limited to, maintaining the driveways in the mobile home park; mowing the grass, trimming the trees and picking up trash in all common areas; maintaining a recreation area and a playground; clearing fallen trees and broken branches; furnishing electrical wire and electrical hook-up services; cleaning lots and pedestals when a renter moves; resolving renters' complaints; and, settling tenant disputes.

X also represents that X's officers, employees and associates are also responsible for renting the mobile home sites; evaluating the backgrounds of prospective tenants; negotiating and signing leases; negotiating contract coverage; overseeing rental collections; communicating with tenants; arranging for pest control; arranging for outside services such as landscaping and snow removal; and, hiring and monitoring subcontractors as needed for repairs. X is also responsible for paying the property tax assessments on the mobile home park.

For the taxable year ending D1, X received approximately \$g in gross rental income and paid approximately \$h in relevant expenses other than depreciation.

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1362(d)(3)(A) provides that an election under § 1362(a) shall be terminated whenever the corporation has accumulated earnings and profits at the close of each of 3 consecutive taxable years, and has gross receipts for each of such taxable years more than 25 percent of which are passive investment income.

Section 1362(d)(3)(C)(i) provides that except as otherwise provided, the term "passive investment income" means gross receipts derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities.

Section 1.1362-2(c)(5)(ii)(B)(1) of the Income Tax Regulations defines "rents" as amounts received for the use of, or right to use, property (whether real or personal) of the corporation.

Section 1.1362-2(c)(5)(ii)(B)(2) provides that "rents" does not include rents derived in the active trade or business of renting property. Rents received by a corporation are derived in an active trade or business of renting property only if, based on all the facts and circumstances, the corporation provides significant services or incurs substantial costs in the rental business. Generally, significant services are not rendered and substantial costs are not incurred in connection with net leases. Whether

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significant services are performed or substantial costs are incurred in the rental business is determined based upon all the facts and circumstances including, but not limited to, the number of persons employed to provide the services and the types and amounts of costs and expenses incurred (other than depreciation).

Based solely on the facts and the representations submitted, we conclude that the income that X derives from the mobile home park is income from the active trade or business of renting property and is not passive investment income as described in § 1362(d)(3)(C)(i).

Except as specifically set forth above, we express no opinion as to the federal tax consequences of the transaction described above under any other provision of the Code. Further, we express no opinion on whether X is a small business corporation eligible to make an S election under § 1361(b)(3) of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to X's authorized representative.

Sincerely yours,

J. Thomas Hines

J. Thomas Hines
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2

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